

May 20, 2021

Via ECF

The Honorable Jesse M. Furman
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: City of Providence, Rhode Island v. BATS Global Markets, Inc., No. 14-cv-2811-JMF – Defendants’ Letter Motion for Rule 37 Discovery Sanctions (ECF No. 589)

Dear Judge Furman:

Defendants respectfully request leave to briefly respond to two arguments made in Plaintiffs’ Response to Defendants’ Letter Motion for Rule 37 Discovery Sanctions (ECF No. 590).

First, Plaintiffs attempt to excuse their failure to substantively respond to Interrogatory Nos. 9 and 10 by claiming that “Plaintiffs alleged that *it is the exchanges* that manipulated the markets by providing tools to the HFT firms that game them unfair trading advantages over other market participants.” (ECF No. 590 at 2 (italics and bolding in original)). That argument is directly contrary to Plaintiffs’ allegations that *the unnamed HFT firms* executed the trades that manipulated the markets:

Defendants participated in the scheme and wrongful course of business complained of herein whereby the Exchanges and Barclays provided *certain market participants – i.e. firms engaged in high-frequency trading (“HFT firms”)* . . . – with material, non-public information and trading advantages so that those market participants could use the advantage obtained to manipulate the U.S. securities markets to the detriment of Plaintiffs and the Class.

Second Consolidated Am. Compl. (ECF No. 252) ¶ 3 (emphasis added). Unless Plaintiffs can show that a specific market participant manipulated the prices at which Plaintiffs traded, they cannot state a manipulation claim under Section 10(b) because none of the Defendants generate quotes or engage in trading activity.

Second, Plaintiffs argue that they are excused from providing substantive answers because they say they will provide the requested information in “expert reports” that are due on May 28, 2021. Plaintiffs, however, already argued that they should not be required to answer the contention interrogatories until after they submitted any experts reports (*see* ECF No. 557 at 2 (arguing that the contention interrogatories were premature “because they seek the substance of Plaintiffs’ experts’ conclusions before the time required to be disclosed”; Mar. 16, 2021 Tr. at 9-11) and the Court rejected that argument (*see* Mar. 16, 2021 Tr. at 17-19).

Honorable Jesse M. Furman
Page 2

Respectfully submitted,

/s/ Paul E. Greenwalt III

Paul E. Greenwalt III
Michael Molzberger
SCHIFF HARDIN LLP
233 South Wacker Drive, Suite 6600
Chicago, IL 60606
Telephone: 312/258-5702
312/258-5600 (fax)

Kayvan B. Sadeghi
SCHIFF HARDIN LLP
1185 Avenue of the Americas, Suite 3000
New York, NY 10036
Telephone: 212-753-5000
212/753-5044 (fax)

*Counsel for BATS Global Markets, Inc.
(n/k/a Cboe Bats, LLC) and Direct Edge
ECN, LLC*

/s/ Douglas W. Henkin

Douglas W. Henkin
Justine N. Margolis
Kiran Patel
DENTONS US LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: 212/768-6832
212/768-6800 (fax)

*Counsel for New York Stock Exchange LLC,
NYSE Arca Inc., and Chicago Stock
Exchange, Inc.*

cc: All Counsel of Record via ECF

/s/ Steven M. Shepard

Robert F. Serio
Justine Goeke
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Telephone: 212/351-3917
212/351-5246 (fax)

Steven M. Shepard
Arun Subramanian
SUSMAN GODFREY LLP
1301 Avenue of the Americas
New York, NY 10019
Telephone: 212/336-8330
212/336-8340 (fax)

*Counsel for The Nasdaq Stock Market LLC
and Nasdaq OMX BX, Inc*